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# ENVIRONMENTAL JUSTICE AND THE DISPARATE IMPACT OF NORTH CAROLINA INDUSTRIAL- SCALE HOG FARMING ON MINORITY COMMUNITIES\*

BARRY YEOMAN<sup>†</sup>

Charles Reid reached out to me after I wrote a series of articles about the impact of industrial-scale hog farming in North Carolina.<sup>1</sup> He felt it was important to look at rural environmental-justice struggles, partly as a reminder that poverty is not simply an urban issue.

To appreciate what is happening right now in rural Eastern North Carolina, I think it's useful to go back to 1985, when I first moved to the state.

I live in Durham. It is a post-industrial city of about 280,000 people. It was much smaller when I arrived here. Back then, every morning when I woke up, the first smell that hit me was the sweetness of tobacco. The Liggett & Myers cigarette factory was less than a mile from my house, and the American Tobacco factory was just beyond that. Tobacco jobs were good jobs in the city. The American Tobacco jobs were unionized. That plant closed in 1987 and was surrounded by razor wire for many years. Then, in

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\* The following comments are adapted from remarks delivered at the St. Thomas School of Law Journal of Law and Public Policy March 2020 symposium on inequality.

<sup>†</sup> Barry Yeoman is an award-winning journalist living in Durham, North Carolina. He specializes in long-form narrative nonfiction, and lectures at Wake Forest University and Duke University.

<sup>1</sup> See Barry Yeoman, *For Years, Complaints About N.C.'s Hog Pollution Vanished in State Bureaucracy*, FOOD & ENV'T REPORTING NETWORK (Aug. 27, 2019), <https://thefern.org/2019/08/for-years-complaints-about-north-carolinas-hog-pollution-vanished-in-state-bureaucracy>; Barry Yeoman, *Here Are the Rural Residents Who Sued the World's Largest Hog Producer Over Waste and Odors – and Won.*, FOOD & ENV'T REPORTING NETWORK (Dec. 20, 2019), <https://thefern.org/2019/12/rural-north-carolinians-won-multimillion-dollar-judgments-against-the-worlds-largest-hog-producer-will-those-cases-now-be-overturned>; Barry Yeoman, *As Smithfield Appeals a Multimillion-Dollar Verdict, a Hog-Farm Neighbor Awaits His Chance at Justice After 20 Years of Hell*, INDEPENDENT WEEKLY (Jan. 21, 2020, 2:59 PM), <https://indyweek.com/news/northcarolina/smithfield-appeals-hog-farm-verdict-feature>.

2000, the Liggett & Myers plant shut down. That was playing out, in different forms, across North Carolina.

As the tobacco industry imploded, state agricultural and political leaders started thinking about what might replace the lost revenue. What they came up with was large-scale hog farming.

In the past, hog farming in North Carolina meant you were actually a tobacco farmer or a cotton farmer, and you had a few hogs on the side. But we took a cue from the Midwest, and we also took a cue from the poultry industry, which in North Carolina has been vertically integrated for many years. A man named Wendell Murphy, who is a North Carolina hog industry entrepreneur, started looking to poultry vertical integration and asking how that can be applied to the hog industry.

Fast forward to the present. What we have now is a contract farming system that looks very much like the contract farming system for chickens, except it is for pigs, which are much bigger. Most of the North Carolina growers who raise large amounts of hogs do so under contract to a large corporation. In most cases it is Smithfield Foods, which is the largest pork producer in the world and is owned by a Chinese company. The farmers own the land and the buildings. Smithfield owns the hogs and the process. Smithfield dictates how these hogs will be raised: indoors, in barns that hold over 1,200 hogs each. The largest operations have 60,000 animals, and it is common to have farms with between 1,000 and 10,000.<sup>2</sup> The waste is flushed into lagoons, which are large open pits where it undergoes bacterial action and is then sprayed on the fields as fertilizer.

The hog industry says this is the most viable and cost-effective way of disposing of hog waste. People who live near these farms say it makes their lives hell. They talk about the smell of living near a hog farm as unbearable. It is not all the time, but it is unpredictable, and it is intermittent.

One woman who I talked to, who lives next door to a farm, described it as if you had a baby who had diarrhea and you left their diaper in the car overnight and came back to it the next morning. It has curtailed outdoor activity in a part of North Carolina where outdoor activity is everything. People have picnics, they dance outside, they play ball games, they have barbecues. That has become, in many places, virtually impossible, say the people who live there.

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<sup>2</sup> *For Years, Complaints About North Carolina's Hog Pollution Vanished in State Bureaucracy*, *supra* note 1.

There is also considerable evidence of health impacts. For years, epidemiologists have looked at various ailments, from headaches and respiratory issues to depression, stress, anxiety, and asthma symptoms.<sup>3</sup> They have seen an association between living or attending school near a hog farm and suffering many of these symptoms. Now, an association is not proof of cause, but there have been numerous studies that have produced similar results, suggesting that living within a certain radius of a hog farm is associated with both emotional and physical symptoms.

It is also associated with being a person of color. Steve Wing, who was an epidemiologist at the University of North Carolina before he died, did a seminal study in which he found that if you draw circles around industrial-scale hog farms, you are more likely to live in that circle if you are African American, Latino, or Native American than if you are white.<sup>4</sup> This becomes an environmental justice issue because of the disproportionate impacts.

Hog farming is big business, and the hog industry has historically been politically connected. Wendell Murphy, the leading entrepreneur of this push into vertical integration of hog farming, also spent a decade in the state legislature. He was both a state House member and then a state senator. He and his allies during the late 20th century passed a number of bills that protected the industry. For example, they outlawed the local zoning of large hog farms<sup>5</sup> and created sales tax exemptions for animal agriculture.<sup>6</sup> There has been a series of laws passed, all the way up until the present, which critics say have given preferential treatment to large-animal agriculture.<sup>7</sup>

So what you get in Eastern North Carolina is a real conflict where people who live near hog farms, many of them poor, many of them people of

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<sup>3</sup> See Julia Kravchenko et al., *Mortality and Health Outcomes in N.C. Communities Located in Close Proximity to Hog Concentrated Animal Feeding Operations*, 79 N.C. MED. J. 278 (2018); Maria C. Mirabelli et al., *Asthma Symptoms Among Adolescents Who Attend Public Schools That Are Located Near Confined Swine Feeding Operations*, 118 AM. ACAD. OF PEDIATRICS e66 (2006); Steve Wing et al., *Air Pollution from Industrial Swine Operations and Blood Pressure of Neighboring Residents*, 121 ENV'T HEALTH PERSP. 92 (2013).

<sup>4</sup> Steve Wing & Jill Johnston, *Industrial Hog Operations in N.C. Disproportionately Impact African-Americans, Hispanics and American Indians*, THE UNIV. OF N. C. AT CHAPEL HILL DEP'T OF EPIDEMIOLOGY, (2014) <http://www.ncpolicy8watch.com/wp-content/uploads/2014/09/UNC-Report.pdf>.

<sup>5</sup> N.C. GEN. STAT. § 153A-340, *repealed by* 2019 N.C. SESS. LAWS 111, *amended by* 2020 N.C. SESS. LAWS 25, § 51(b).

<sup>6</sup> N.C. GEN. STAT. § 105-164.13E (amended 2020).

<sup>7</sup> See generally N.C. GEN. STAT. § 153A-340; N.C. GEN. STAT. § 105-164.13E; N.C. GEN. STAT. § 143-215.9D; N.C. GEN. STAT. § 143-215.9E.

color, are up against contract farmers who are working for the largest pork industry in the world, an enormous and politically powerful entity with a lot of allies in the state legislature.

I spent a good part of 2019 reporting on the hog industry. I worked with a number of media organizations, primarily under the sponsorship of a nonprofit journalism organization called the Food and Environment Reporting Network.<sup>8</sup> FERN, as it's called, funds and publishes in-depth, enterprising, serious investigative reporting about food and ag.<sup>9</sup>

In the first project that we did, we partnered with the Midwest Center for Investigative Reporting.<sup>10</sup> The Midwest Center did a public records request asking for complaints against animal operations in North Carolina and all of the top animal agriculture states.<sup>11</sup> In many of those states, like Iowa and Texas, thousands of records came back.<sup>12</sup> When the records came back in North Carolina, there were a little over thirty.<sup>13</sup> Which could mean either of two things: either hog farms are really hunky-dory and no neighbors are complaining, or neighbors *are* complaining and the public records are being withheld.

What we learned is that in 2014, the state legislature passed a law that sealed complaints by members of the public against agricultural operations unless an enforcement action was taken by a state regulator.<sup>14</sup> As it turns out, the state regulators rarely took enforcement actions. What I was told by people who have followed this closely, who have represented both environmental and environmental justice groups, is that many of these inspections have a casual bent. So, an inspector shows up at a hog farm and maybe knows the farmer, and says, "Hey, you've got some deficiencies. If

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<sup>8</sup> The Food and Environment Reporting Network ("FERN") is an independent, nonprofit news organization focused on food, agriculture, and environmental health through high-impact investigative and explanatory reporting, exploring injustice and abuses of power within the food system. *What We Do*, THE FOOD AND ENV'T REPORTING NETWORK, <https://thefern.org/what-we-do/> (last visited Sept. 11, 2020).

<sup>9</sup> See generally Ted Genoways, *Terror in the Heartland*, FOOD AND ENV'T REPORTING NETWORK (May 15, 2017) <https://thefern.org/2017/05/terror-in-the-heartland/>; Anna-Catherine Brigida, *Every Day You Become More Desperate*, FOOD AND ENV'T REPORTING NETWORK (Oct. 4, 2018) <https://thefern.org/2018/10/every-day-you-become-more-desperate/>.

<sup>10</sup> *For Years, Complaints About North Carolina's Hog Pollution Vanished in State Bureaucracy*, *supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> N.C. GEN. STAT. § 143-215.9D, 143-215.9E.

you fix them, I won't write you up." The farmer maybe fixes them and doesn't get written up. Therefore, there is never a public record. So not only do we have a situation where people say that they are being affected in terrible ways in terms of their quality of life, but any efforts to get information meet this black box of state law.

People are fighting back. I think this is important. In a lot of places that I have traveled in my life, it seems like environmental activists and environmental justice activists are operating in different worlds. Where largely white, middle-class environmentalists are thinking about the water, thinking about the wildlife, thinking about the air, environmental justice folks are thinking about where clean water, clean air, and people's lives intersect. In North Carolina, those groups are actually working in partnership. It is impressive to see groups like the North Carolina Environmental Justice Network,<sup>15</sup> which is led by people of color, and the Waterkeeper Alliance, which has a predominantly white constituency, working hand-in-hand.<sup>16</sup>

They work at the administrative level, for example, filing Title VI civil rights complaints with the Environmental Justice Agency saying that how North Carolina regulates hog farms is racially discriminatory and therefore illegal and have filed state administrative actions.<sup>17</sup>

Also, in 2014 and 2015, there were twenty-odd lawsuits filed on behalf of more than 500 North Carolinians, mostly African American, against Smithfield's pork production subsidiary, Murphy Farms, saying that they were public nuisances.<sup>18</sup> Five of those cases have gone to trial.<sup>19</sup> The

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<sup>15</sup> The North Carolina Environmental Justice Network is a grassroots, people of color-led coalition who work with low income communities and people of color on issues of climate, environmental, racial, and social justice. *About*, N. C. ENV'T JUST. NETWORK, <https://ncejn.org/about/> (last visited Sept. 11, 2020).

<sup>16</sup> The Waterkeeper Alliance works to ensure every community worldwide has drinkable, fishable, swimmable water by holding polluters accountable with the backing of local communities. *What We Do*, WATERKEEPER ALL., <https://waterkeeper.org/what-we-do/> (last visited Sept. 11, 2020).

<sup>17</sup> EarthJustice, EPA File No. 11R-14-R4 (2017).

<sup>18</sup> *In re NC Swine Farm Nuisance Litig.*, E.D.N.C. No. 5:15-CV-13-BR, 2015 WL 3948309, at \*1 (E.D.N.C. June 29, 2015).

<sup>19</sup> *McKiver v. Murphy-Brown, LLC*, No. 7:14-CV-180-BR, 2018 WL 10322918, at \*1 (E.D.N.C. Feb. 16, 2018) (verdict of \$51 million reduced to \$3 million); *Williams vs. Murphy Brown, LLC (In re NC Swine Farm Nuisance Litig.)*, Case No. 19-1108 (E.D.N.C. Jan. 28, 2019) (verdict of \$25 million reduced to \$630,000); *Artis v. Murphy Brown, LLC*, No. 7:14-CV-237-BR, 2018 WL 3213141 (E.D.N.C. June 28, 2018) (verdict of \$473.5 million reduced by statute to \$94 million); *Gillis v. Murphy-Brown, LLC*, No. 7:14-CV-185-BR, 2018 WL 3520125 (E.D.N.C. July 20, 2018) (verdict varied between \$100 to \$75,000 per plaintiff);

plaintiffs have won all of them. The rulings have carried judgments that have ranged from relatively small to about \$100 million.<sup>20</sup> Actually, the jury verdict was almost \$500 million; it was scaled back because of a cap on punitive damage, but it was still nearly \$100 million.

Some of those cases have been appealed to the Fourth Circuit Court of Appeals and the court had a hearing in January.<sup>21</sup> The senior judge in that case, who was J. Harvie Wilkinson III, a Reagan appointee, was pretty sympathetic to the plaintiffs and seemed pretty hostile to Smithfield. He suggested that if the neighbors of these hog farms were, to quote Judge Wilkinson, “McMansions,” maybe we would not be here at all.<sup>22</sup> The neighbors are waiting for the Fourth Circuit’s ruling. It is due at some unspecified time in the future. Meanwhile, this fight remains active and lively.<sup>23</sup>

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McGowan v. Murphy-Brown, LLC, No. 7:14-CV-182-BR, 2018 WL 2269903 (E.D.N.C. May 17, 2018) (verdict of \$473.5 million in punitive damages).

<sup>20</sup> See, note 19, *supra*.

<sup>21</sup> McKiver\_2018 WL 10322918, at \*1.

<sup>22</sup> *Id.*

<sup>23</sup> In November 2020, the Fourth Circuit rejected Smithfield’s call for a retrial in the first of the cases. Smithfield immediately announced it was settling the cases for an unspecified amount. See Barry Yeoman, *Smithfield Settles Suits Over North Carolina Farms, After Losing Appeal*, FOOD & ENV’T REPORTING NETWORK (Nov. 19, 2019), [https://thefern.org/ag\\_insider/smithfield-settles-suits-over-north-carolina-farms-after-losing-appeal/](https://thefern.org/ag_insider/smithfield-settles-suits-over-north-carolina-farms-after-losing-appeal/).